

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **ACTING CHAIRMAN SEN. KELLY GEBHARDT**, on March 10, 2003 at 3:00 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: Sen. John Cobb, Chairman (R)

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 277, 2/24/2003; HB 518,
2/28/2003; HJR 21, 2/26/2003; HB
450, 2/24/2003; HB 468, 2/28/2003;
HB 178, 2/22/2003
Executive Action: HJR 21; HB 450; HB 178; HB 218

HEARING ON HB 277

Sponsor: REPRESENTATIVE MONICA J. LINDEEN, HD 7, HUNTLEY

Proponents: Nancy Schlepp, Montana Farm Bureau (MFB)

Opponents: None.

Opening Statement by Sponsor: **REPRESENTATIVE MONICA J. LINDEEN**, representing HD 7, said HB 277 was a constitutional amendment that would extend term limits from eight to twelve years. She said she did not see revisiting term limits as an attempt to overturn the voters' will. Montana now has experience with term limits that has helped to identify both positive and negative aspects. **REP. LINDEEN** said lack of institutional knowledge has been found to be a problem, but on the good side, having new people in the Legislature has been positive. She said one of the most damaging things she sees is a lack of trust between the two parties. Term limits do not help people come to trusting relationships because there isn't enough time.

Proponents' Testimony: **Nancy Schlepp**, representing Montana Farm Bureau (MFB), stood in support of HB 277 for the same reasons MFB supported **SEN. MIKE TAYLOR's** bill dealing with the same issue. She said HB 277 goes in the right direction, although MFB would like to see term limits completely repealed.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **SENATOR CAROLYN SQUIRES** asked if either HB 277 or **SEN. TAYLOR's** bill passed the Legislature, would the MFB like to be one of the initial groups to stimulate repeal of term limits. **Ms. Schlepp** said that decision would be up to the Board, but they do feel strongly about term limits and would seriously consider such action. **SEN. SPRAGUE** thanked **Ms. Schlepp** for her statement.

SENATOR MIKE SPRAGUE said SB 204 was identical to HB 277 in what it accomplishes, except for the way the ballot issue would appear on the ballot. One says to add an additional four years; the other to extend term limits to twelve years. Coordinating language would be necessary if both were to pass. **SEN. SPRAGUE** asked which language would most easily be understood by the voter. **REP. LINDEEN** said hers.

CHAIRMAN KELLY GEBHARDT said we know that Legislators presently serve eight out of sixteen years, but the public may not. This bill reminds the public exactly what the term limits would be: twelve years in a twenty-four year period. He said HB 277 was clearer. **REP. LINDEEN** said she would leave that to the wisdom of the Committee. As far as coordinating the bills, she said it might be helpful to speak with the Chair of House State Administration.

SEN. SPRAGUE asked, in the case of a rewrite, if both sponsors would sign on. **REP. LINDEEN** said probably.

SENATOR MIKE WHEAT said he noticed that **SEN. TAYLOR's** bill only extends the terms of Legislators. **REP. LINDEEN's** bill extends term limits for the Governor and others, and therefore

they are different bills. **REP. LINDEEN** said she had not read **SEN. TAYLOR's** bill, and thanked **SEN. WHEAT** for noticing the differences.

Closing by Sponsor: **REP. MONICA J. LINDEEN** thanked the Committee.

HEARING ON HB 518

Sponsor: **REPRESENTATIVE MONICA J. LINDEEN, HD 7, HUNTLEY**

Proponents: **John McEwen**, Department of Administration (DOA); **John Schontz**, Montana Newspaper Association (MNA)

Opponents: **Jim Fall**, MNA

Opening Statement by Sponsor: **REPRESENTATIVE MONICA J. LINDEEN, representing HD 7**, said HB 518 was a committee bill recommended by the Appropriations Subcommittee on General Government and Transportation (DOT). The Department of Administration's (DOA) budget came with a decision package dealing with purchasing statewide newspaper advertising. At the time, it sounded like a good idea, but there wasn't confidence that agencies would comply without a statute. HB 518 does this. The point is that rates are better with bulk buying. The idea of supporting a website for employment listings was also discussed with DOA. It was noted that not everyone had access to a computer.

Proponents' Testimony: **John McEwen, State Personnel Administrator, representing the Department of Administration (DOA)**, said the idea was to use the purchasing power of State government in a more efficient way by having the DOA purchase advertising for vacancies. A rate was worked up: \$12 per FTE per year. It was thought to purchase a 3x8 section in the newspaper to highlight various agency openings. **Mr. McEwen** said the Sunday newspaper has redundant information about the State government as an employer. As an example he noted that the wording "equal employment opportunity employer" is repeated many times. By removing redundancy, getting less expensive rates by guaranteeing expenditure, and being more efficient in purchase of space, the State could save money. The DOA has some authority over executive branch agencies by virtue of a policy-making role. The Committee wanted to create an obligation for State agencies to buy advertising from the major State newspapers by going through the DOA. This is intended to consolidate statewide advertising, and not intended to restrict agencies from buying an ad in a local paper. **EXHIBIT (sts50a01)**

John Schontz, representing Lee Enterprises and the Montana**Newspaper Association (MNA)**, said two things were worth noting:

1) an assumption is that the DOA would have a signed agreement with each newspaper which would entitle the DOA to a lower cost on advertising. He said that was called brokerage. Most newspapers, including Montana's newspapers, traditionally do not accept brokerage advertising; 2) the referenced newspapers--the Missoulian, the Montana Standard, the Great Falls Tribune, the Billings Gazette, and the Independent Record--are all part of a group called the Montana Newspaper Group. the Ravalli Republic is also included in that group. **Mr. Shontz** said he didn't understand why there was such a difference from buying advertising from the Montana Newspaper Group state-wide vs. going to each newspaper and buying locally until he realized that whoever did the research for HB 518 was quoting the wrong rates. He said they would be correct if the advertisement in question were to sell a house or a car, but they do not reflect employment advertising rates. in the table below, the rates quoted in the bill (the lower rates) are juxtaposed with the rates **Mr. Shontz** said would actually be charged (the higher rates).

The Missoulian	17.00	54.45
The Montana Standard	15.37	37.80
The Great Falls Tribune	23.65	63.52
The Billings Gazette	37.30	74.20
The Independent Record	12.82	16.38

SENATOR WHEAT asked for clarification of the Montana Group. **Mr. Shontz** said the Montana Group is a group of newspapers, comprised initially of the five largest daily papers in the state, serving as a vehicle to advertise throughout the State from one central place. He said there are three big "holes" in that coverage: southeastern Montana (Miles City), Bozeman, and Kalispell. For \$216 per column inch, employment classified ads can be purchased to run in all member papers throughout Montana at a significant discount. He questioned the fiscal note.

CHAIRMAN GEBHARDT asked **Mr. Shontz** if he was a proponent or an opponent. **Mr. Shontz** said if the bill passes, newspapers will make more money. He said he had trouble deciding if he was a proponent, an opponent, or an informational witness; but the reality was that under the bill the State will pay more, and from an economic standpoint he was a proponent.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: SEN. SQUIRES

said she put into place a State Employees Protection Act, but that the Senate Finance and Claims Committee and the House Appropriations Committee decided not to retain the individual in charge of the registry. She asked **John McEwen** to reassure her that ads would not be put in to the paper until they were submitted to State employees. **Mr. McEwen** said that was the policy that would be followed.

SEN. SPRAGUE said it would be more efficient to summarily refer to the jobs that were open with a statement referring interested parties to the local Job Service or a website, where more information would be available. He said most people applying for jobs were computer literate. **Mr. McEwen** said there was a difference of opinion among the agencies as to what information should be included in various advertising sources. Some want to highlight specific openings in the newspapers to be sure they capture attention.

SEN. SPRAGUE said he wasn't computer literate, but if he was looking for a job he would find some way to discover the information he needed. He said somewhere between being too generic and being too specific with newspaper advertising was appropriate. Referring to the example given to the Committee, he said it was a mistake to think that people looking for those jobs weren't computer literate. **Mr. McEwen** said State government employed people for over 150 positions, not all of which requires computer literacy. *{Tape: 1; Side: B}*

CHAIRMAN GEBHARDT asked if, in the case before the Committee, a person clicked on the line (the hyperlink), a more complete description of the job would be available. **Mr. McEwen** said yes, a full four-page description was given.

SEN. WHEAT asked if he was correct in reading the fiscal note to reflect a \$300,000 saving over the biennium. **Mr. McEwen** said yes.

SEN. WHEAT asked **Mr. McEwen** to comment on **Mr. Shontz's** testimony regarding the use of erroneous rates in computing the fiscal note. **Mr. McEwen** said his staff did the computations last fall using the information they were given by the papers. He said the Montana Group people told the researcher a better rate was available by going to individual newspapers.

SEN. WHEAT asked **Mr. McEwen** to comment on **Mr. Shontz's** statement regarding brokerage advertising. **Mr. McEwen** said the determination would depend on whether State government was treated as one company or many. He said the fact was that individual agencies purchase their own advertising now. If the Department of Administration started to purchase for all the agencies, the argument would be that the State was a single employer purchasing enterprise-wide services.

SEN. WHEAT asked **Mr. Shontz** to respond to the previous statement. **Mr. Shontz** gave an example: Each division of Pepsi is

treated as its own account because there are many brand names and companies owned by the Pepsi corporation. That is not traditionally what the newspapers do. He said if market muscle is used to create lower prices, there is a potential violation of the Sherman Act.

SEN. WHEAT told **Mr. Shontz** that somebody on **Mr. McEwen's** staff had talked with the various newspapers and had been given contract agreement prices. **Mr. Shontz** said they evidently asked for the general classified advertising rate contract agreement. The prices are correct for that rate, but are not correct for employment advertising. He noted that employment ads are placed on websites as part of the State's package.

SEN. WHEAT asked if **Mr. Shontz** anticipated litigation on the basis of the brokerage policy if the bill passed. **Mr. Shontz** said he didn't know, but the State would pay more advertising than it currently does.

SEN. WHEAT asked if **Mr. Shontz** disagreed with the fiscal note assumptions. **Mr. Shontz** said yes. He said it would be helpful if he talked with someone from the Department and the newspapers to work out correct numbers. **SEN. WHEAT** asked if that could be done today. **Mr. Shontz** said it could be done within the week. **SEN. WHEAT** said, speaking for himself, **SEN. SPRAGUE** and **CHAIRMAN GEBHARDT**, questions had to be answered before going ahead with HB 518.

SEN. SPRAGUE asked if the Lee organization contracted for its paper in one purchasing agreement. **Mr. Shontz** said each paper had different suppliers and rates, and that each newspaper did its own telemarketing. **SEN. SPRAGUE** said that didn't seem very efficient.

SEN. SPRAGUE asked **Mr. McEwen** if he had checked rates for days other than Sunday. **Mr. McEwen** said he hadn't checked rates for days other than Sunday. **Mr. Shontz** said the Sunday classified rate is the highest rate of the week. He said employment ads can't be purchased in the Great Falls Tribune just for Sunday, but have to run Sunday and Monday. **SEN. SPRAGUE** asked **Mr. Shontz** to check rates for Monday-Tuesday, and Thursday-Friday for comparison. **Mr. Shontz** said he would.

Closing by Sponsor: **REP. MONICA J. LINDEEN** thanked the Committee. She said the point of HB 518 was to save the State money. If that proves not to be true, she asked the Committee to kill the bill.

CHAIRMAN GEBHARDT asked for a report on advertising rates to be returned to the Committee by March 14.

HEARING ON HJR 21

Sponsor: REPRESENTATIVE PENNY MORGAN, HD 21, BILLINGS

Proponents: None.

Opponents: None.

Opening Statement by Sponsor: REPRESENTATIVE PENNY MORGAN, said HJR 21 was brought by the veterans in Yellowstone County, and will be brought before state legislatures across the county. It asks that the Senate and House of Representatives resolve "a moment of remembrance on Memorial Day." The moment of remembrance will occur at the same time across the United States. **REP. MORGAN** said Memorial Day has been officially celebrated in the country since 1868 as a way of honoring and remembering the sacrifices brave Americans in the armed forces who gave their lives to secure and maintain liberty, and those Americans who now serve in the armed forces. She said the true meaning of Memorial Day is in danger of being lost in favor of barbeques, picnics and the start of summer. HJR 21 encourages all citizens to reflect on the heroic sacrifices Memorial Day is intended to commemorate.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: REP. PENNY MORGAN thanked the Committee.

EXECUTIVE ACTION HJR 21

Motion/Vote: SEN. SQUIRES moved that HJR 21 BE CONCURRED IN.

Motion carried unanimously 4-0. SENATOR MICHAEL WHEAT will carry HJR 21 on the floor.

HEARING ON HB 450

Sponsor: REPRESENTATIVE BRAD NEWMAN, HD 38, BUTTE

Proponents: L. Harold Blattie, Montana Association of Counties (MACO); Charles Brooks, Yellowstone County; Lori Maloney, Butte-Silver Bow Counties; Mary Phippen, Montana Association Clerks of District Court (MACDC); Nancy Sweeney, Lewis & Clark Clerk of Court

Opponents: None.

Opening Statement by Sponsor: **REPRESENTATIVE BRAD NEWMAN** distributed **EXHIBIT(sts50a02)** **EXHIBIT(sts50a03)**. He said HB 450 addresses fees charged by Clerks of Court for various services. It proposes certain fees be increased in keeping with actual costs, specifically for making copies of papers on file, copies of marriage licenses and dissolution decrees, and for searching court records. He said fees have not been increased for fifteen years. **REP NEWMAN** referred to a previous version of the fiscal note showing a greater impact, and explained why it had been revised.

Proponents' Testimony: **Lori Maloney, Clerk of Court representing Butte-Silver Bow County**, said Clerks of Court want to increase copy fees to reflect the price of paper, toner, and equipment. She said when copy machines need repair, or need to be replaced, there is not a reserve fund for that purpose. Set fees have been proposed, not per page fees, so that copies can be requested over the internet and telephone. She said search fees have also been increased \$2.00 per name for a seven-year search and \$1.00 per additional year. The changes are in line with what State agencies charge, and with what Clerks and Recorders charge in other states. She said only a small portion of fees are retained at county level.

Mary Phippen, representing Montana Association of Clerks of District Court, said HB 450 increased fees that had not changed since 1987. The fees were not covered by SB 176, the State Assumption Bill from last session; they are not included in SB 134, the bill to revise District Court assumption costs this session; and are not included in 15-1-121, the entitlement share payment appropriation that was part of HB 124, commonly known as the Big Bill from last session. **Ms. Phippen** said **Charles Brooks, representing Yellowstone County**, was unable to be at the hearing and asked her to register Yellowstone County's support for HB 450.

L. Harold Blattie, representing the Montana Association of Counties, rose in support of HB 450 as amended. He didn't think the fiscal note with the bill was accurate because county treasurers may have to modify computer programming for revenue collection and distribution systems.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **CHAIRMAN GEBHARDT** asked **Lori Maloney** if collected fees were compiled into a report and sent to the treasurer; and does the treasurer then submit the

report to the Department of Revenue. She said the JCMS system, which is the automated computer system, provides monthly reports that are submitted to the Treasurer's office along with the money. A copy goes to the County Auditor, and a copy to the State.

Closing by Sponsor: REP. BRAD NEWMAN said SEN. SHEA will carry HB 450 on the floor. He thanked the Committee.

EXECUTIVE ACTION HB 450

Motion/Vote: SEN. SPRAGUE moved that HB 450 BE CONCURRED IN. Motion carried unanimously 4-0. SENATOR DEBBIE SHEA will carry HB 450 to the floor.

HEARING ON HB 468

Sponsor: REPRESENTATIVE KIM GILLAN, HD 11, BILLINGS

Proponents: None.

Opponents: None.

Informational Witnesses: Dulcy Hubbert, Program Supervisor, Office of Commissioner of Political Practices (COPP); Jim Scheier, COPP

Opening Statement by Sponsor: REPRESENTATIVE KIM GILLAN said one reason HB 468 was brought forward was that voters were increasingly turned off with negative campaigning. Hb 468 attempts to address that issue without violating First Amendment rights. Printed election material that includes voting record information will be required to provide a voting record. Material referencing voting records are to be signed off by the Treasurer of a Political Committee or the candidate using the records in campaign material, saying to the best of his or her knowledge the information is true and accurate. REP. GILLAN said HB 468 also clarified that the Great Seal of the State of Montana is not to be used in election material. She passed a letter from the Secretary of State referring to permitted use of the Great Seal. REP. GILLAN said she had a Truth in Campaigning bill in 1999 that did not pass because of First Amendment rights. She distributed **EXHIBIT (sts50a04)**, illustrating what HB 468 would require on election materials. She said the bill is not a complete answer to the problem, but is a step in the right direction. She said there is a technical amendment.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: **CHAIRMAN GEBHARDT**

said three similar bills had been through the Committee this session. He asked **REP. GILLAN** if the candidate using the information signed off on statements about voting records, or if a signature was needed from the person who voted. **REP. GILLAN** said the person using the information would state that "to the best of my knowledge this is true and accurate."

CHAIRMAN GEBHARDT asked if that meant, if he saw campaign material that wasn't in compliance, he called the person who disseminated it; and, if it was actually wrong, the material would be withdrawn. **SEN. GILLAN** said, technically yes and no. The only provisions in the bill is that an affidavit be sent to the Commissioner on Political Practices (COPP) for campaign material that is too small for the "true and accurate" statement to be printed. She said she assumes that if wrong information is printed, a candidate could rebut it. There is no obligation to correct it because when a candidate signs his or her name it is assumed that an effort was made to ensure accuracy. **CHAIRMAN GEBHARDT** said that **SEN. TAYLOR's** bill held a candidate responsible for false statements, punishable by COPP, and required a speedy retraction. **SEN. GILLAN** said her 1999 bill was along those lines, but the question arose as to who determined the truth. This bill skirts that issue by requiring a candidate commenting about someone's voting record to cite the reference. She said, without looking at **SEN. TAYLOR's** bill, it would seem hard to enforce.

SEN. SPRAGUE said he had been using the Great Seal in his material for years, and asked if that was an illegal practice. **REP. GILLAN** said technically, yes. She read a portion of the Secretary of State's letter. **SEN. SPRAGUE** noted that the statement used by the Secretary of State used the word "prohibited," not "illegal." **REP. GILLAN** said the Great Seal was not to be used for election materials that are for the specific purpose of advocating the success or defeat of a candidate, political party, or ballot issue. She referred to the "Buy Back the Dams" initiative that used the Great Seal on a website. In that instance, the Secretary of State (SOS) asked the committee to remove it from the website. **REP. GILLAN** said the SOS had been contacted (about HB 468), and was pleased to have the use of the Great Seal clarified and put into statute. **SEN. SPRAGUE** noted that the COPP had never stopped his use of the Great Seal. **REP. GILLAN** said if there had been a complaint, the procedure would have been for the COPP to notify the SOS.

SEN. WHEAT said he felt the COPP had scrutinized all the material he used, when there had been no complaints.

SEN. SQUIRES said she was aware that some Legislators used Legislative letterhead inappropriately.

SEN. SPRAGUE said 2-6-111 doesn't forbid the use of the Great Seal, but just says it's in custody.

SEN. WHEAT said this bill would make its use prohibitive, but that is was not clear there was a current statute.

CHAIRMAN GEBHARDT asked **Dulcy Hubbert** if she knew why the seal was called the Great Seal of Montana instead of the Seal of the Great State of Montana. She said she didn't.

Sen. SQUIRES asked **Jim Scheier** about a court case that inaccurately reported statistics, and if anything had come of it. He said the case was an alleged violation of 13-37-131, which is misrepresentation of voting records. The issue was whether someone could be penalized for negligence. **Mr. Scheier** said because public officials were involved, case law requires there would have to be evidence of malice. Negligent misrepresentation would not be enough.

SEN. SQUIRES asked **Mr. Scheier** if, in his eyes, HB 468 says the Great Seal couldn't be used under any circumstances. He said the letter from the SOS read by **REP. GILLAN** says the SOS is the keeper of the seal, but that "seal," in that instance, means a specific seal and not its graphic reproduction, duplication, enlargement or reduction. He asked if that was why its use had not been enforced. **Mr. Scheier** said he thought use of the Great Seal had not been enforced by COPP because there is no current statute under the COPP's jurisdiction that would give rise to an enforcement action. He said he reads HB 468 as prohibiting use of the Great Seal in election material described in subsection (1).

CHAIRMAN GEBHARDT asked if the Great Seal was used in election material until now, would it have been illegal. **Mr. Scheier** said it would not have been, at least in the view of COPP, since there is no violation of any current statute within her jurisdiction. He said he was not speaking for the SOS.

SEN. SPRAGUE said he was worried that with passage of HB 468 someone would be found in violation for using stationery to invite people to dinner. **SEN. SQUIRES** said she strongly felt that would be a violation of office and that she, personally, would never do it. Stationery is given to communicate with constituents. **SEN. SPRAGUE** asked if stationery were copied, did it become personal material. **SEN. SQUIRES** said no. She understood the question, but thought photocopied usage expressed total disrespect of constituents.

CHAIRMAN GEBHARDT asked the sponsor if the use of the Great Seal was a significant part of HB 468. **REP. GILLAN** said clarifying language was included in the bill because of confusion around the "Buy Back the Dams" issue.

Closing by Sponsor: REP. KIM GILLAN said HB 468 was a small step towards increasing public confidence in election materials. She said the COPP would develop rules or guidelines to implement the bill. {Tape: 2; Side: B} By having a name on materials, people will be able to identify the source, and people will be more careful about the material they disseminate. SEN. GILLAN said she didn't want the bill to die because of the Great Seal language. She said it was intended to clarify usage, and not to attack anyone. She said she would be glad to work with the committee to improve the bill.

CHAIRMAN GEBHARDT said Executive Action would not be taken on HB 468 until it had been checked for coordination with other bills in the Legislature.

HEARING ON HB 178

Sponsor: REPRESENTATIVE NANCY RICE FRITZ, HD 69, MISSOULA

Proponents: Darrell Rude, Executive Director, School Administrators of Montana

Opponents: None.

Informational Witnesses: David Senn, Executive Director, Teachers' Retirement System (TRS)

Opening Statement by Sponsor: REPRESENTATIVE NANCY FRITZ, said HB 178 allows some retired teachers, some administrators, and some specialists to return to full-time teaching without losing retirement benefits. The bill is narrowly conceived and intended to meet the shortage of school professionals, mainly in small town rural Montana. HB 178 had broad input from education professionals, from fellow legislators, from rural education associations, the Office of Public Instruction (OPI), and from David Senn, Director, Teachers' Retirement System (TRS). REP. FRITZ said "narrowly conceived" meant that the bill applies only to positions that cannot be filled by non-retired teachers. It is designed to disallow abuses in the hiring process and, most importantly, it does not draw down TRS funds. She distributed EXHIBIT (sts50a05), prepared by Mr. Senn. The exhibit shows that school districts must provide evidence to the office of public instruction each year that the employer school district has been unable to fill the position with a non-retired teacher. She said "being unable" meant that there was no teacher who applied for the position, or no teacher who accepted an offer for the position, probably because the salary was too low. If they accept a position, eligible retired members continue to receive 100% of

their retirement in addition to their salary as a teacher, a specialist, or an administrator. The condition is that retirees must have been retired and drawing retirement benefits for at least twelve months. The reason for the condition is to discourage people from retiring in order to do this. **REP FRITZ** said the TRSs are in marginal status, and it isn't intended to draw down those funds with early retirement. The people who will take advantage of the provisions of HB 178 will have already retired--perhaps for a personal reason, perhaps having moved back to an area, or perhaps to help fill a gap. The bill will sunset in three years, which will provide a test period to see how many teachers, specialists, and administrators participate in this exception to the regular law. **REP. FRITZ** said the reason the retirement system won't be diminished is that employers continue to contribute their share to the TRS. The system will not receive the amount the teacher would ordinarily be contributing if hired through the normal process. However, since no teacher is in place, that money would not be flowing into the retirement system anyhow. The reason the teacher hired under this provision would not contribute to the TRS is due to IRS provisions concerning age discrimination. **REP. FRITZ** reviewed the bill.

Proponents' Testimony: **Darrell Rude, Executive Director, School Administrators of Montana**, said until June 28th he had been a school principal. When he started his new job on July 1st, one of his first phone calls was from a retired principal who had gone back to his home district and accepted a job. He said that because of penalties attached to current laws and rules concerning teacher retirement, there is a shortage of school teachers and administrators in Montana. **Mr. Rude** said the shortage is not exclusive to rural areas, but occurs in many medium and larger school districts as well. He referred to the publication, "Who will teach Montana's Children," and the follow-up publication prepared by **Dori Nielson** for the Self Project. He said many Montana school districts are finding it difficult to "find 'em, hire 'em, and keep 'em." He said some teachers are accepting bonuses, getting loan forgiveness, and taking advantage of incentives offered in other states. He said there is also a shortage in some training areas including special education, the arts, math, and science. He said HB 178 provides a partial solution to the shortage of teachers, specialists, and administrators in Montana, and urged its support.

Opponents' Testimony: None.

Informational Testimony: **David Senn, Executive Director, Teachers' Retirement System (TRS)**, said TRS would normally stand as a proponent, but is taking an informational stand on HB 178. He said it was important to note that people hired under this

provision have been retired for twelve months. No one is going to retire on Friday and go back to work Monday morning. He said contributing members need to stay in the system. If people draw benefits earlier than expected, they're not going to contribute to the retirement system as long, will receive less retirement income, and TRS is not going to be able to invest those contributions. TRS would have less income and would pay benefits out earlier. There would be no positives in that sort of proposal. With HB 178, however, there is no anticipated impact to the retirement system because: 1) there is a 12-month retirement requirement; 2) employers continue to contribute to the retirement system; 3) there is a three-year sunset that will give statistical experience from which to evaluate its success. **Mr. Senn** said TRS often opposed bills like HB 178 because they usually cost the system money. Putting retired people into positions normally filled by 22-25 year olds, who will stay for 25 years funding the retirement system, is not good business. That will not happen with HB 178. **Mr. Senn** said people are not retiring early. A study last interim found 2,399 people had retired in the last six years, of whom only 381 retired when first eligible. **SEN. FRITZ** explained the actuarial foundations of the TRS in order to show the necessity of careful management to keep the system viable. He said the three-year sunset clause allows for quick intervention should there be an unexpected adverse impact to the TRS.

Questions from Committee Members and Responses: **SEN. WHEAT** used his retired wife as an example, asking if the bill passed and she went back to work, could she continue to work if the bill sunsetted. **David Senn** said yes and no. Under HB 178, she could only be hired if there were no eligible teachers applying for and accepting the position. In that case, she could be hired for one year. The following two years the same certification procedure would be repeated. After three years, if a qualified teacher still couldn't be found to fill the position, Mrs. Wheat would have to either terminate the position or decide to come out of retirement and return to active status. On active status she would contribute to the retirement system. If she worked another year full time, her benefit would be recalculated, she could select a different retirement option, and her retirement benefit would increase. **Mr. Senn** explained there was no real negative for her to come out of retirement.

SEN. WHEAT, again using his wife as an example, said he understood that she would continue to draw her retirement and her employer would contribute on her behalf to the TRS. He asked why she would not be contributing to the TRS. **Mr. Senn** said the Age Discrimination Act (ADA) requires that the employee have some expectation of a benefit. He said unless the TRS calculated another benefit that would not be the case. As people get older,

with shorter life expectancies, the retirement rate assessed, which is the same as a younger person, may be more than the benefit is worth, creating age discrimination issues. He said if she were to contribute to TRS, a second benefit would have to be recalculated. Since HB 178 does not contemplate that recalculation, as written the bill would be underfunded and he would have to be an opponent.

SEN. WHEAT said he looked at it differently because it seems if his wife went back to work, drawing retirement and wages at the same time, that was a benefit. He asked why the bill couldn't be structured to recognize the benefit offered is being able to work and draw retirement. *{Tape: 3; Side: A}* He then cited an example where, as a University student, he paid into a retirement system that he never benefitted from. **Mr. Senn** said the concern he has is based on advice from the system's actuary and tax council. To charge older employees the employee contribution and not provide additional benefits would be age discrimination. If additional benefits are provided, then the bill needs to have an increase in the employer contribution because there is an additional cost to both pay a retirement benefit at the same time that you approve a second retirement benefit.

CHAIRMAN GEBHARDT said he predicted in three years it would be found that the system was working, and a request would be made to extend the sunset or remove it. Then, unless an unexpected teacher pool becomes available, this provision might adversely affect the TRS. He asked **Mr. Senn** to comment. **Mr. Senn** said he didn't disagree. Sunset bills basically "allowed the camel's nose under the tent. Sooner or later you end up with the whole camel inside." He said in three years time there would be documentation on the program.

CHAIRMAN GEBHARDT asked how many years of work were required to get retirement pay. **Mr. Senn** said under TRS a benefit could be drawn as early as age 50 with 5 years work. It would be an actuarially reduced benefit, not a full benefit. Full benefits can be drawn at any age with 25 years work, or at age 60 with as little as 5 work years. He explained the method of calculating retirement pay based on years of service.

CHAIRMAN GEBHARDT asked if a teacher taking advantage of provisions in HB 178 would be depriving a young person of a job. **SEN. WHEAT** said no, there is an annual contract. **Mr. Senn** said the position would be advertised every year in the hope of attracting a "regular" teacher.

SEN. SQUIRES made the point that a person would be better off just to come out of retirement and go back to work rather than go to work under the provisions of SB 178. **Mr. Senn** explained that teacher would be better off in terms of job security. He or she wouldn't be drawing retirement benefits, but would be paying into the TRS and would get more money when he or she re-retired.

Closing by Sponsor: REP. NANCY FRITZ said many people had input into drafting HB 178. Every attempt had been made to draft a bill that would avoid abuses. She also pointed out that re-hiring in the same position year after year would build tenure. She reviewed some of the things HB 178 would and would not do. She said it did not apply to university teachers. It does not put retired teachers in competition with other teachers. It has little, if any, negative effect on the TRS. When a district is unable to fill a position, nobody makes a contribution to the retirement system. Under this plan, at least the county is making a contribution to the system. HB 178 does not encourage educators to retire. She said no one is going to retire with even the hope of an annual contract, after one year of retirement, and a sunset at the end of what would then be two years. REP. FRITZ referred to the first seven pages of EXHIBIT(sts50a06) that speaks to the teacher shortage. She said HB 178 was not written for retired teachers. She said there is unfairness in Montana, but that unfairness exists in other States, too. A general discussion ensued about benefits offered in other states that take qualified teachers from Montana. REP. FRITZ said there were teachers who, for various reasons, were place-bound. Some of those people may accept positions under the provisions of HB 178. She said those experienced teachers, specialists and administrators will raise standards and prove to be models to young teachers in the schools.

EXECUTIVE ACTION HB 178

Motion/Vote: SEN. WHEAT moved that HB 178 BE CONCURRED IN. Motion carried unanimously 4-0. SENATOR MICHAEL WHEAT will carry HB 178 on the floor.

EXECUTIVE ACTION HB 218

Motion: SEN. WHEAT moved that HB 218 BE CONCURRED IN.

Motion: SEN. WHEAT moved that the AMENDMENTS TO HB 218 BE CONCURRED IN. (HB021801.apm 4:05 p.m.) Motion carried unanimously 4-0. EXHIBIT(sts50a07)

Motion/Vote: SEN. WHEAT moved that HB 218 BE CONCURRED IN AS AMENDED. Motion carried unanimously 4-0. SENATOR GEBHARDT will carry HB 218 on the floor.

RESOLUTION FOR COMMITTEE NOMINATIONS

Motion/Vote: SEN. SQUIRES moved DO PASS to a RESOLUTION FOR COMMITTEE NOMINATIONS for GOVERNOR JUDY MARTZ'S BOARD APPOINTMENTS, and to SEGREGATE JOHN MERCER and CHRISTIAN HUR, BOARD OF REGENTS NOMINEES, for COMMITTEE HEARINGS. Motion carried unanimously 4-0.

Committee Business: A second list of governor's appointees was distributed. **EXHIBIT**(sts50a08)

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

EXHIBIT (sts50aad)